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Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

October Term 1972

No. _____

JOHN A. HUTTER, et al., Petitioners	)	Appeal from the United States Court of Appeals Seventh Circuit
vs.	)	
DOOR COUNTY, WISCONSIN, et al., Respondents	)	(No. 71-1180)

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS SEVENTH CIRCUIT

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OPINIONS IN COURT BELOW

(a) There are no official or unofficial reports. The opinion of the court is appended to this petition.

JURISDICTIONAL GROUNDS

(b) The jurisdiction of this court is invoked according to Section 28, paragraph 1257(3) on the grounds that the decisions

of the lower courts have denied petitioners their Civil and other rights claimed under the Constitution of the United States and the Amendments thereto. Petitioners also believe action of lower courts is not in complete agreement with the usual course of judicial procedure.

(i) The judgment of the court of appeals, Seventh Circuit was dated and entered January 19, 1972.

(ii) The Court of Appeals, Seventh Circuit denied a petition for rehearing on February 7, 1972.

(iii) Petitioners believe that the statutory provision Section 28, paragraph 1257(3) confer jurisdiction on this court to review the judgment by a writ of Certiorari.

QUESTIONS PRESENTED FOR REVIEW

(c) The question presented for review is: Are the Civil and Constitutional rights of the petitioners denied and violated when they are illegally and wantonly denied the use of a public facility and are they entitled to their day in court so a jury may consider the case and award any actual exemplary and punitive damage that are considered just?

A further question is: Should petitioners have their complaint dismissed without an opportunity to amend?

A further question is: Did the District Court and Court of Appeals err in finding that petitioners complaint fails "to contain any specific factual averments which would support plaintiffs wholly

conclusory allegations with respect to violations of their Constitutional and Civil rights."

A further question is, even if no violation of Constitutional rights were involved, would not the case be within the jurisdiction of the District Court where all requirements were met and no objections raised? (for diversity juris.)

(d) CONSTITUTIONAL PROVISIONS INVOLVED

(1) Amendment 14 of the United States Constitution pertaining to Civil rights, equality before the law and due process.

(2) The Federal Rules of Civil Procedure. Some pertinent provisions are quoted in argument.

(3) Section V of by-laws of governmental agency (Door County, Wisconsin) known as "The Door County Chamber of Commerce" and incorporated as a non-profit corporation according to Wisconsin Statutes which require that its charter and by-laws be recorded by the Register of Deeds. This provision reads: "Any member may be expelled by two third vote of the Board of Directors for non payment of dues, or by the unanimous vote of Board of Directors after due notice and hearing for conduct unbecoming a member. Such charges shall be specifically stated in the notice."

This provision is to be found as exhibit 20, addendum, as part of the ancillary appeal pending before the Circuit Court of Appeals Seventh Circuit No. 71-1300. It will be made available on request.

STATEMENT OF CASE

(e) The petitioners are citizens of Illinois and also property owners and taxpayers in Door County, Wisconsin. At the time of this action and for over 20 years previous they operated a resort on their property known as Chateau Hutter.

The respondent, the County of Door, Wisconsin, has an agency, the Door County Chamber of Commerce which promotes tourist business for the County which is its principal activity and amounts to over $100,000.000. per year.

The petitioners have been members of this public agency and derived the principal amount of their business through participation in the activity of this agency, from the inception of their business in 1946.

This agency is controlled by a manager and executive secretary, who is a full time employee of the County and reports directly to the County Board of Supervisors; it is also controlled by a Board of Directors who function according to the charter of the Chamber and its by-laws, and instructions from the County Board of Supervisors.

On August 10, 1964, in a secret meeting of the Board, the petitioners were secretly ousted and did not find out about it until March of 1965. This ouster was illegal and contrary to Wisconsin law and the recorded charter and by-laws of this County agency which provides: in Section V, "Any member may be expelled by the unanimous vote of the Board of Directors after due notice and hearing for conduct unbecoming a member. Such charge shall be specifically stated in notice."

Petitioners, of course, received no notice of meeting and only 8 of 18 directors were present at the ouster meeting.

After being ousted in 1965, they were admitted in 1966 so the Chamber could escape libel charges because the Board thought the Statute of Limitations would protect them.

Whereupon the petitioners were again illegally ousted in 1967 so [illegible], which forced them out of business in 1969. No other member was ever so treated.

The trial court combined three distinct cases - 70 C 251, 70 C 252 and 70 C 290 in one decision. The Court of Appeals, Seventh Circuit reversed the trial court in 70 C 290. The case No. 70 C [illegible] Appeals 71-1180 is the one under consideration here.

70 C 290 was the complaint the trial court leveled most of its charges concerning the many and variety of allegations and denied petitioners right to amend, yet this was the case that the Court of Appeals reversed and ordered the trial court to permit amendments.

BASIS FOR FEDERAL JURISDICTION

(g) A federal court has jurisdiction where so basic a federal question is involved as the violation of rights guaranteed by the Constitution.

The petitioners in their complaint averments 1, 2, 3, 4, established diversity jurisdiction. This was never questioned. However, the requirements for a diversity action which are here met, are not required

in an action involving Civil rights.

The United States District court for the Eastern District of Wisconsin, is the district in which the petitioners own their 500 acre farm and resort and where alleged acts took place.

(h) In its decision of January 19, 1972 the United States Court of Appeals for the Seventh Circuit stated in their order: "The memorandum Decision and Order filed by the district in these actions discloses that the complaints were dismissed for failure to state a claim upon which relief can be granted."

This was the decision appealed to the Circuit Court of Appeals Seventh Circuit.

After examining petitioners Complaint and item (g) supra, could this court come to the conclusion that the complaint failed to state a claim upon which relief could be granted?"

The Appeals Court further states: "Insofar as the present complaints may seek to predicate relief and recovery on alleged conspiracy in violation of the Plaintiffs-Appellants Civil rights, each fails to contain any specific factual averment which would support plaintiffs wholly conclusory allegations with respect to violations of their constitutional and Civil rights."

Would petitioners averments 5 of their complaint "That the plaintiffs have been members of the Door County Chamber of Commerce, Sturgeon Bay, Wisconsin; were granted partial privileges prior to 1965; were granted partial privileges in 1966 and were

denied all privileges subsequently." And averment 8, "That plaintiffs were denied privileges of membership without due procedure required in Charter of Chamber of Commerce. Thus plaintiffs were and are denied due process as required under Amendment 14 of the United States Constitution by this alleged County agency," be considered "wholly conclusory allegations?"

A pleader is always in a quandary in drawing up a complaint. If too much information or evidential matter is included in averments, he is charged with prolixity; if he tries to be brief he is charged with making "wholly conclusory allegations" and "no specific factual averments" as in this case.

The trial court on the other hand said the complaint was "verbose, confused and redundant."

The Appeals court combined two different actions in its decision each one being distinct from the other. Only 71-1180 is being appealed.

The defendants or the court could have followed Rule 12(e) and moved for a more definite statement.

The Appeals Court in its decision stated "The district court dismissed the action without leave to amend."

How could the Appeals Court approve of this?

Also in averment 9 the petitioners alleged that "The defendants have conspired with competitive resort owners, directors,

officers and members of their agency to deprive plaintiffs of their Constitutional rights to engage in business in Wisconsin."

And in averment 10, "That as a result of harassment, libel, slander and conspiracy plaintiffs have been forced out of business in Wisconsin."

And in averment 16, "That the defendants Door County, its Board, and Treasurer were asked by letter on August 2, 1967 and February 6, 1970 to cease and desist this unlawful activity against plaintiffs to no avail."

Surely a citizen of Illinois should not have his business in Wisconsin destroyed by a political unit of that State, Door County, acting under color of the law of that State.

The wanton acts of the County agency forced the petitioners out of business in 1969.

Above facts were claimed and alleged in averment 4, 5, 6, 7, 10, 16 of petitioners complaint.

Under Civil rights statutes and Amendment 14 of the United States Constitution any person under United States jurisdiction is entitled to use all public facilities, be it a toilet, a County park, a State park, a beach, or as in this case, a public facility supported by taxes (including those of petitioners), to promote business for a person residing in the County. And, of course, that person is entitled to due process as provided by State Statutes and Amendment 14 of the U. S. Constitution.

Above facts were claimed and alleged in averments 8, 9, 17 of petitioners complaint.

The petitioners believe they are entitled to have their day in court before a fact finding jury of their peers. They also believe that if the trial court objects to any facet of their complaint, they should be entitled by pre trial conference or other means to amend their complaint to comply with the wishes of the court as provided by the Federal rules of Civil procedure.

The petitioners pray that this court will grant them justice.

For the reasons stated above the court is asked to grant them their request for a Writ of Certiorari to the Circuit Court of Appeals Seventh Circuit.

Respectfully submitted,

John A. Hutter, Jr.,
Attorney pro se and for
other petitioners

APPENDIX

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

February 7, 1972

Before

Hon. Luther M. Swygert, Chief Judge
Hon. Latham Castle, Sr. Circuit Judge
Hon. John Paul Stevens, Circuit Judge

JOHN A. HUTTER, et al., Plaintiffs-Appellants,	)	Appeals from the United States District Court for the Eastern District of Wisconsin
vs.	)	
No. s. 71-1179, 71-1180	)	
BEN C. SCHRAML, Chairman of County Board, Door County, et al., Defendants-Appellees	)	

IT IS ORDERED by the Court that the petitions for rehearing filed in the above-entitled cases be, and the same are hereby denied.

U. S. CIRCUIT COURT OF APPEALS
Seventh Circuit

HUTTER)
vs.) 71-1180
DOOR COUNTY)

1/19/72

Nos. 71-1179 and 71-1180.

ORDER

Upon consideration of the briefs, the appendices and oral argument, the judgment orders of the district court which are the subject of these appeals are affirmed.

The district court dismissed each of the actions without leave to amend. The memorandum Decision and Order filed by the district court in these actions discloses that the complaints were dismissed for failure to state a claim upon which relief can be granted. The court additionally correctly observed that the complaints fell far below the "short and plain statement of the claim" requirement of Rule 8(a) of the Federal Rules of Civil Procedure.

But, apart from the specific reason for dismissal set forth in the district court's memorandum decision and order, we perceive no error in the court's disposition of the two actions. Insofar as the complaints seek relief from alleged discriminatory tax assessments and the recovery of damages on account thereof, each is subject to the same infirmities relied upon in our order of November 13, 1969, affirming the dismissal of a similar action by the plaintiffs-Appellants against some of the same defendants-appellees. See: Hutter Northern Trust, et al, v. Milton Haen, etc., et al., 7 Cir. No. 17662 (Order entered November 13, 1969

adopting Decision and Order of the District Court set forth therein). Insofar as the present complaints may seek to predicate relief and recovery on an alleged conspiracy in violation of the plaintiff-appellants' Civil rights, each fails to contain any specific factual averments which would support plaintiffs' wholly conclusory allegations with respect to violations of their constitutional and civil rights.

And, on the particular circumstances here involved we see no basis for disturbing the discretion exercised by the district court in denying leave to amend.

The judgment orders appealed from are affirmed.

* * * * * * * * * * * * *

U. S. DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

HUTTER)
vs.) Case No. 70 C 252
DOOR COUNTY) 12/17/70

DECISION AND ORDER

70 C 251 70 C 252 70 C 290

Motions to dismiss the complaints in each of these three cases are now before the court.

The complaint in 70 C 290 contains 49 paragraphs, and the court will not attempt to delineate the various allegations contained therein. Generally speaking, the complaint contains a melange of charges that the defendants, as representatives of the local

Chamber of Commerce, engaged in boycott, slander, libel, harassment, unfair competition, and injury to reputation with reference to the plaintiffs. This complaint also contains charges regarding the allegedly illegal assessment of the plaintiffs' real estate in Door County; that tax assessment was the subject of an earlier complaint by these plaintiffs in this court (No. 68 C 364), and the court ordered the action dismissed on April 24, 1969. The latter dismissal was affirmed by the court of appeals for the seventh circuit in an unpublished opinion (No. 17662), decided November 13, 1969. On April 27, 1970, the United States Supreme Court denied certiorari. See 397 U. S. 1062 (1970).

The plaintiffs' claim regarding discriminatory real estate assessments was also considered by Judge John W. Reynolds in another action commenced by these plaintiffs in this court (No. 69 C 593); the complaint in that case was dismissed by Judge Reynolds on September 2, 1970.

In case No. 70 C 251, now pending before this court, the complaint sets forth a medley of allegations charging that the defendants, as town officials, threatened and insulted the plaintiffs; it also contains allegations of discriminatory assessments on real estate similar to those referred to in all the cases described above.

In case 70 C 252, also now pending before this court, the plaintiffs charge that the town officers engaged in acts of "harassment, libel, slander, and abuse of conspiracy" (sic, complaint P.10) and prevented the plaintiffs from engaging in business in

Wisconsin; it is also claimed that the defendants fraudulently increased the plaintiffs' real estate assessment, a claim similar to the one that has been referred to in the complaints discussed above.

The plaintiffs have appeared by their attorney, John A. Hutter, who is one of the plaintiffs. Since Mr. Hutter has not been admitted to practice in this court, there may be a question as to his right to appear on behalf of Clara N. Hutter and Hutter Northern Trust.

Even though the complaints are entitled to favorable interpretation under Rule 8(f), Federal Rules of Civil Procedure, they fall far below the short and plain statements of the claims required under Rule 8(a). Since Mr. Hutter is an attorney, he may properly be held to a slightly higher standard than a layman. Kelly v. Butler County Board of Commissioners, 399 F.2d 133, 135 (3rd Cir. 1968); Weaver v. Pate, 390 F.2d 145 (7th Cir. 1968); Eaton v. Bibb, 217 F.2d 446 (7th Cir. 1954); Hartman Electrical Mfg. Co. v. Prime Mfg. Co., 9 F.R.D. 510 (E.D. Wis. 1949). Cf. Picking v. Pennsylvania R. Co. 151 F.2d 240, 242 (3rd Cir. 1945). However, it is my opinion that these complaints must fail even if granted the full protection generally afforded to pro se complaints.

In addition, it is noted that these complaints are successors to those in the previous actions which have failed to comply with Rule 8(a). and instead, they have now commingled a hodge-podge of allegations purporting to allege deprivation of Civil rights, breach of contract, illegal taxation, defamation and other claimed wrongs.

Many of the assertions of the complaints are set forth in the passive voice, without any recitation of the date or the place of the transaction. A large number of the allegations of the complaints are conclusory; when evidentiary matter is asserted, it is generally vague and argumentative.

In my opinion, it would be unjust to require the defendants in these three cases to attempt to answer the complaints which have been filed. Not only do they violate Rule 8(a), but they are so unclear and non-specific that motions to rectify the flaws in the complaint would be excessively burdensome. The plaintiffs' pleadings in these cases are like those described in Corcoran v. Yorty, 347 F.2d 222, 223 (9th Cir. 1965), where the court referred to the complaint as "verbose, confused and redundant."

With reference to the allegations of an improper tax assessment, the court adopts herein by reference its opinion of April 24, 1969, in case 68 C 364.

With reference to those allegations in the complaints which allege a denial of equal protection of the laws, I find that the plaintiffs' conclusory assertions are insufficient to state a cause of action. In Borchlewicz v. Partipile, 44 F.R.D. 540, 542, (E.D. Wis. 1968), this court stated:

> "A civil rights complaint requires factual allegations, not conclusions or broad generalizations. Negrich v. Hohn, 379 F.2d 213 (3d Cir. 1967); Birnbaum v. Trussell, 347 F2d. 86 (2d Cir. 1965)."

Another Civil rights case in which an

analogous ruling was made is Rodes v. Municipal Authority, 409 F.2d 16, 17 (3rd Cir. 1969), cert. denied, 396 U.S. 861 (1969), rehearing denied, 396 U.S. 950 (1969), where the court held:

> "A plaintiff is required to set forth alleged misconduct and resultant harms in a way which will permit an informed ruling whether the wrong complained of is of federal cognizance. Mere conclusionary allegations that unspecified constitutional rights have been infringed will not suffice."

After careful attention to the three complaints now before the court, I am persuaded that they fail to state a cause of action upon which relief could be granted and must be dismissed. Considering both the past and current lawsuits, it is my holding that dismissal without leave to amend must be ordered since these plaintiffs have already had numerous opportunities to assert their claims.

Now, therefore, IT IS ORDERED that the plaintiffs complaints and actions in cases 70 C 251, 70 C 252 and 70 C 290 be and hereby are dismissed without leave to amend.

Dated at Milwaukee, Wisconsin, this 17th day of December, 1970.

(signed) Myron L. Gordon
U.S. District Judge

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

HUTTER
vs.
DOOR COUNTY

No. 70 C 252
12/23/70

ORDER

On December 1, 1970, the court filed its decision and order in each of the above-entitled cases and directed that they be dismissed without leave to amend. A judgment based on such decision and order was entered by the clerk on December 9, 1970.

The plaintiffs have now filed two motions in each of the above-entitled actions. One motion is to "Vacate Judgment and Leave to File Amendments to Complaint or to file Amended Complaint;" and the other motion in each case is to "RECONSIDER AND SET ASIDE ORDER OF DECEMBER 1, 1970 DISMISSING PLAINTIFFS (sic) COMPLAINT."

The matters raised in the aforesaid motions were amply considered in the court's decision dated December 1, 1970, and no new or competent reason is advanced in the current motions to justify the relief sought.

Now, therefore, IT IS ORDERED that the aforesaid motions be andhereby are denied.

Dated at Milwaukee, Wisconsin, this 23rd day of December, 1970.

(signed) Myron L. Gordon
U. S. District Judge